



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

221TACD2025

[REDACTED]

Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“TCA 1997”) brought on behalf of [REDACTED] (“the Appellant”) in relation to a decision of the Revenue Commissioners (“the Respondent”) dated 12 December 2024, to refuse to allow the Appellant’s claim for a repayment of Stamp Duty, pursuant to section 83D of the Stamp Duty Consolidation Act 1999 (“the SDCA”), in the amount €5,500.00.
2. The liabilities arose in circumstances where the Respondent rejected the Appellant’s claim dated 12 December 2024, on the basis that the requirement that construction commence within 30 months of the date of execution of the instrument, as set out in section 83D(3)(a) SDCA 1999 had not been met.
3. On 19 December 2024, the Appellant duly appealed the assessments to the Commission by submitting a Notice of Appeal and accompanying documentation. In accordance with section 949Q TCA 1997, on 19 March 2025, the Appellant submitted a Statement of Case which built on the Appellant’s Notice of Appeal and on 21 March 2025, the Respondent submitted its Statement of Case. The Commissioner has considered all of the documentation submitted by the parties in support of their respective positions in this appeal.
4. By agreement with the parties, this appeal is adjudicated without a hearing in accordance with the provisions of section 949U TCA 1997.

Background

5. On 5 March 2020, an instrument was executed in respect of the purchase of lands by the Appellant at [REDACTED] (“the Site”).
6. On 10 December 2020, a Stamp Duty return was filed by the Appellant’s Solicitor on behalf of the Appellant. The consideration stated on the return was the amount of €100,000 and the Stamp Duty liability, charged at the applicable non-residential rate of 7.5%, was calculated in the amount of €7,500. A late-filing surcharge and interest for late payment, also applied to the return.
7. On 12 December 2020, the Appellant paid in full the Stamp Duty and penalties and on the same date, a stamp certificate issued to the Appellant.
8. On 2 December 2024, the Appellant submitted a claim for repayment of Stamp Duty in the amount of €4,074.74, via the Respondent’s eRepayments system, in accordance with

section 83D SDCA 1999. The claim was supported by three documents namely: a section 83D Consent Form, a section 83D Declaration for a Single Dwelling Unit and a Commencement Notice [REDACTED] from [REDACTED] relating to the Site showing the date of receipt of the notice as "29.03.2024" and the date entered onto the register as "02.04.2024".

9. The Respondent submitted that it has refused the Appellant's claim based on the information provided, as construction commenced in excess of 48 months after the date of execution of the instrument, that being 5 March 2020.

Legislation and Guidelines

10. The legislation relevant to this appeal is as follows:

11. Section 83D of the SDCA 1999, Repayment of stamp duty where land used for residential development, provides *inter alia* that:

- (1) (a) *In this section -*

"land", where used without qualification, means the land that is conveyed or transferred by an instrument;

"residential development" means the construction of one or more dwelling units and references to "relevant residential development" shall be construed in accordance with paragraph

- (b) *References in this section to "relevant residential development" shall be construed -*

- (i) *in a case in which a claim for a repayment under subsection (8) is, pursuant to subsection (7)(b), made in respect of such of the construction operations as for the time being are being carried out pursuant to a particular commencement notice, as references to the residential development that comprises those construction operations, or*

- (ii) *in either -*

- (I) *a case in which, as mentioned in subsection (7)(b), the making of a claim for repayment under subsection (8) is deferred until completion of the residential development concerned, or*

- (II) a case in which the residential development concerned is not carried out in a phased manner,

as references to the entire of the residential development concerned.

-
- (3) (a) Subject to subsection (18) and the other provisions of this section, stamp duty paid on an instrument may be repaid in accordance with this section in relation to the land if construction operations on the land commence pursuant to a commencement notice within the period of 30 months following the date of execution of the instrument.

-
- (5) (a) Where the satisfaction of any of the following -

- (i) the condition specified in paragraph (a) of subsection (3),

- (ii) the conditions for the avoidance of a clawback under paragraph (c) of that subsection, or

- (iii) the condition specified in subsection (4)(b), is prevented by -

- (I) an appeal made under section 7 of the Building Control Act 1990, or

- (II) an order made by a court requiring that construction operations cease to be carried out,

the period commencing on the making of the appeal or the making of the order by the court and ending on the determination of the appeal or the discharge of the order shall not be reckoned for the purpose of computing the period of 30 months specified in subsection (3)(a) or the period of 2 years specified in subsection (3)(c)(i) or (4)(b).

- (8) *A claim for a repayment under this section shall –*
- (a) *be made by an accountable person,*
 - (b) *without prejudice to paragraph (d), be made in a form and manner specified by the Commissioners,*
 - (c) *include a statutory declaration, in such form as the Commissioners specify, stating –*
 - (i) *that the condition specified in subsection (3)(a) has been satisfied, and*
 - (ii) *where a claim relates to a part of the stamp duty paid on the stamping of an instrument, the proportion of the area of the land represented by the appropriate part, or as the case may be, the proportion of the land occupied by the single dwelling unit,*
 - (d) *be made by electronic means and through such electronic systems as the Commissioners may make available for the time being for any such purpose, and the relevant provisions of Chapter 6 of Part 38 of the Taxes Consolidation Act 1997 shall apply,*
 - (e) *not be made until such time as construction operations have commenced pursuant to a commencement notice.*

.....

- (11) (a) *Where the Commissioners are of the opinion that the requirements of this section have not been met in relation to a claim for repayment, they shall decide to refuse the claim and shall notify the claimant in writing of the decision and the reasons for it.*
- (b) *An accountable person aggrieved by a decision to refuse a claim for repayment, may appeal to the Appeal Commissioners against the decision in accordance with section 949I of the Taxes Consolidation Act 1997, within the period of 30 days after the date of the notification of the decision.*

Evidence and Submissions

Appellant's submissions

12. The Commissioner sets out hereunder a summary of the submissions made by the Appellant, as set out in the Appellant's Notice of Appeal and Statement of Case:-

"[The Appellant] has been deemed ineligible for a S83D refund claim as construction did not commence within the 30 month period from the date of execution. When the site was purchased in 2020, the lands were zoned as Business/Industrial. The site was purchased on the knowledge that rezoning would be taking place in the near future. The [REDACTED] Development Plan came into effect on [REDACTED] 2022 in which [the Appellant] was then able to proceed with planning as the lands had been rezoned to mixed use/residential.

Planning permission was submitted on [REDACTED] May 2023

Planning was granted on [REDACTED] August 2023

Commencement on site was on [REDACTED] March 2024

.....

[The Appellant] purchased a site in 2020, however, at the time the lands were zoned as business/industrial. The site was purchased with the knowledge that the New County Development plan would be coming into effect in the near future.

The New County Development plan came into effect on [REDACTED] 2022 which then meant that they were able to proceed with planning as the lands had been rezoned to mixed use/residential.

.....

[The Appellant] applied for a refund for part of the stamp duty paid, however, the application was refused as 'construction did not commence within the 30 month period from the date of execution'

Respondent's submissions

13. The Commissioner sets out hereunder a summary of the submissions as set out in the Respondent's Statement of Case:-

"2.1 A Stamp Duty return, with [REDACTED] was filed on 10.12.2020 by [REDACTED] solicitor) on behalf of [the Appellant] (the Accountable Persons).

2.2 The return was for a 'Conveyance / Transfer of Property' to [the Appellant], and the Date of Execution of the instrument was 05.03.2020.

2.3 The details of the property transferred, as stated on the Stamp Duty return, are as follows:

i. Type: Non-Residential / Site Only

ii. Address: [REDACTED]

iii. Folio: [REDACTED]

iv. Area: [REDACTED] hectares

2.4 The consideration stated on the return was €100,000 and the Stamp Duty liability, charged at the applicable non-residential rate of 7.5%, was calculated as €7,500.

2.5 A late-filing surcharge, and interest for late payment, also applied to the return.

2.6 The duty and penalties were paid in full on 10.12.2020 (i.e., the day of filing) and the stamp certificate issued the same day.

2.7 On 02.12.2024, a Stamp Duty Section 83D Refund Claim was submitted to Revenue via the eRepayments system by the Appellant, [the Appellant].

2.8 The refund claim was for €4,074.74, against [REDACTED], and was accompanied by three supporting documents:

i. Section 83D Consent Form – completed by [the Appellant] and consenting that [the Appellant] may make the repayment claim and declaration on behalf of both Accountable Persons

ii. Section 83D Declaration for a Single Dwelling Unit – completed by [the Appellant]

iii. Commencement Notice [REDACTED], relating to [REDACTED] showing:

- date of receipt of notice 29.03.2024
- date entered onto register 02.04.2024

2.9 The claim and supporting documentation were reviewed by a National Stamp Duty Office caseworker.

2.10 The claim was rejected by the caseworker, via the eRepayments system, on 12.12.2024 as the condition set out in s.83D(3)(a) SDCA had not been met, i.e. that construction must commence within 30 months of the Date of Execution of the instrument. The decision was based on the following:

i. Date of Execution stated on Stamp Duty return 05.03.2020

ii. Date construction commenced stated on the eRepayments claim 29.03.2024

iii. Response to 6(b) statement on Section 83D Declaration submitted "Construction commenced within 30 months following the date of execution of the instrument" "No" ticked

Based on the information provided, construction commenced in excess of 48 months after the Date of Execution of the instrument.

2.11 On 31.01.2025, [the Appellant] contacted Revenue via MyEnquiries (ref 2501-217059) noting the decision and requesting a letter stating same. The letter was issued via MyEnquiries, as an attachment, by the caseworker on 06.02.2025.

2.12 Reviewing the Notice of Appeal (dated 19.12.2024), Revenue note that it is stated in that document that the amount of tax at issue is €5,500. However, the Section 83D claim submitted to Revenue was for €4,4074.74 (as noted in 2.8 above). This difference is likely due to discrepancies relating to land area across submissions to Revenue by the Appellant, or on his behalf. Had the claim been made within the appropriate time limits, these discrepancies would have had to be satisfactorily addressed before the claim could have been progressed any further.

.....

...the Appellant mentions the land in question needing to be rezoned before planning could proceed and a supporting document was provided with the NoA. We wish to advise the Commission that Revenue have no record of this information being brought to our attention at the time the refund claim was being considered, nor after the refund decision was communicated. It was first seen by us when we received the NoA from the Commission.

However, it is Revenue's position that the rezoning situation does not affect the decision made regarding the validity of the refund claim. Section 83D(S)(a), SDCA 1999, provides for two specific circumstances where the 30-month clock [i.e., Section 83D(3)(a)], for construction to commence following the Date of Execution of the

instrument, can be paused. Waiting on the rezoning of land from business/industrial to mixed use/residential is not one of them.”

Material Facts

14. Having read the documentation submitted and having listened to the evidence and submissions at the hearing of the appeal, the Commissioner makes the following findings of material fact:-

- 14.1. On 5 March 2020, an instrument was executed in respect of the purchase of lands by the Appellant at the Site.
- 14.2. On 10 December 2020, a Stamp Duty return was filed by the Appellant's Solicitor on behalf of the Appellant.
- 14.3. The consideration stated on the Stamp Duty return was the amount of €100,000 and the Stamp Duty liability, charged at the applicable non-residential rate of 7.5%, was calculated in the amount of €7,500.
- 14.4. On 12 December 2020, the Appellant paid in full the Stamp Duty and penalties and on the same date, a stamp certificate issued to the Appellant.
- 14.5. On 2 December 2024, the Appellant submitted a claim for repayment of Stamp Duty in the amount of €4,074.74, via the Respondent's eRepayments system, in accordance with section 83D SDCA 1999.
- 14.6. The claim was supported by three documents namely, a section 83D Consent Form, a section 83D Declaration for a Single Dwelling Unit and a Commencement Notice from [REDACTED], relating to the Site showing the date of receipt of the notice as "29.03.2024" and the date entered onto the register as "02.04.2024".
- 14.7. On 25 May 2023, an application for planning permission was submitted in respect of the Site.
- 14.8. On 15 August 2023, planning permission was granted in respect of the Site.
- 14.9. On 29 March 2024, construction commenced on the Site.
- 14.10. In response to the 6(b) statement on the section 83D Declaration, "Construction commenced within 30 months following the date of execution of the instrument" "No" was ticked by the Appellant.

14.11. The construction operations on the Site did not commence within the period of 30 months following the date of execution of the instrument, that being 5 March 2020.

Analysis

15. The Appellant's appeal relates to a decision of the Respondent dated 12 December 2024, to refuse to allow the Appellant's claim for a repayment of Stamp Duty, pursuant to section 83D SDCA 1999. The Respondent submitted that the reason it refused the Appellant's claim for a repayment of Stamp Duty was that the requirements of section 83D(3)(a) SDCA 1999 had not been met, as construction on the Site did not commence within 30 months of the date of execution of the instrument, that being 5 March 2020. The Commissioner has found as a material fact in this appeal, that construction on the Site commenced on 29 March 2024.

16. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law, for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, at paragraph 22, Charleton J. stated that:

"The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable".

17. The Commissioner also considers it useful herein to set out paragraph 12 of the judgment of Charleton J. in *Menolly Homes*, wherein he stated that:

"Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute..."

Section 83D SDCA 1999

18. Section 83D(3)(a) SDCA 1999 provides that Stamp Duty paid on an instrument may be repaid in accordance with this section in relation to the land, if construction operations on the land commence, pursuant to a commencement notice, within the period of 30 months following the date of execution of the instrument.

19. The Commissioner observes that section 83D(8) SDCA 1999 is also relevant to this appeal and a claim for the repayment of Stamp Duty, in circumstances where it provides

inter alia that “a claim for a repayment under this section shall..... include a declaration, in such form as the Commissioners specify, stating....that the condition specified in subsection (3)(a) has been satisfied.”

20. The Commissioner notes that the facts of this appeal are such that on 5 March 2020 an instrument was executed in respect of the purchase of the Site by the Appellant. Thereafter, on 10 December 2020 a Stamp Duty return was filed by the Appellant's Solicitor on behalf of the Appellant in respect of the Site and on 12 December 2020, the Appellant paid the Stamp Duty liabilities in full.
21. Furthermore, the Commissioner notes that it was not until 2 December 2024, that the Appellant made a claim pursuant to section 83D SDCA 1999 for the repayment of Stamp Duty. The Commissioner notes that in respect of that claim, supporting documentation was submitted by the Appellant including a Commencement Notice from [REDACTED] [REDACTED] relating to the Site showing the date of receipt of the notice as 29 March 2024.
22. It does not appear to be in dispute that construction did not commence until 29 March 2024 (which the Commissioner notes is referenced in the Appellant's Notice of Appeal and Statement of Case), a period in excess of 30 months following the date of execution of the instrument, that being 5 March 2020. Furthermore, and of notable importance in this appeal, the Commissioner observes from the Respondent's submissions that the 6(b) statement on the section 83D Declaration that “Construction commenced within 30 months following the date of execution of the instrument” was ticked “No” by the Appellant. Rather, the Commissioner notes that the Appellant seeks to argue that he was prevented from commencing construction on the Site, as at the time the Site was purchased, the lands were zoned business/industrial and it was not until [REDACTED] June 2022, when a new County Development plan came into effect, that the Appellant was in a position to proceed with planning permission as the lands had been rezoned to mixed use/residential.
23. Section 83D SDCA 1999 provides for certain circumstances where the 30-month time limit may be paused. The Commissioner is satisfied that section 83D SDCA 1999 does not include a provision whereby the time limit may be paused due to awaiting the rezoning of land.
24. The Commissioner notes the requirement in section 83D(8) SDCA 1999, that a claim for the repayment of Stamp Duty shall include a declaration stating that the condition specified in subsection (3)(a) has been satisfied. Furthermore, the Commissioner notes the use of the word “shall” in section 83D(8) SDCA 1999, which indicates an absence of discretion in the application of this provision. The wording of the provision does not

provide for extenuating circumstances in which the requirement might be mitigated. The Commissioner has no authority or discretion to direct that a repayment be made to the Appellant where the claim for a repayment does not comply with the requirements of section 83D SDCA 1999. Having regard to the commencement notice dated 29 March 2024 and the date of execution of the deed being 5 March 2020, the Commissioner is satisfied that the Appellant was not in a position to satisfy the requisite requirement for a claim for repayment, namely that construction operations on the Site commenced pursuant to a commencement notice within the period of 30 months following the date of execution of the instrument.

Conclusion

25. As set out above, in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. The Commissioner is satisfied that the Appellant has not discharged the burden of proof to satisfy the Commissioner that the Respondent was incorrect in its decision to refuse the Appellant's claim for the repayment of Stamp Duty in accordance with section 83D SDCA 1999 for the reasons set out in this Determination.
26. For completeness, the Commissioner notes references made in the submissions to a claim for repayment of Stamp Duty both in the amount of €5,500 and the amount of €4,074.74. It appears from the Notice of Appeal that the Appellant submitted that the amount of tax at issue was €5,500. However, the Commissioner notes that the Respondent submitted that the section 83D SDCA 1999 claim submitted by the Appellant to the Respondent was in the amount of €4,074.74. For the purposes of this appeal the Commissioner has referenced the amount in the Appellant's Notice of Appeal. However, the amount claimed is not relevant to the outcome of this appeal nor does it change the Commissioner's findings herein. It is compliance with the requirements of section 83D SDCA 1999 that is relevant herein.

Determination

27. As such and for the reasons set out above, the Commissioner determines that the decision of the Respondent dated 12 December 2024, to refuse to allow the Appellant's claim for a repayment of Stamp Duty, pursuant to section 83D SDCA 1999, in the amount €5,500.00, shall stand.
28. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and duties. The Appellant was correct to appeal to have clarity on the position.

29. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ (6) TCA 1997.

Notification

30. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ(5) and section 949AJ(6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ TCA 1997 and in particular the matters as required in section 949AJ(6) TCA 1997. This notification under section 949AJ TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

31. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Claire Millrine
Appeal Commissioner
7 August 2025